

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

FEB - 8 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Petition for Rulemaking to Amend )  
the Commission's Part 68 Rules )  
to Authorize Regulated Carriers )  
to Provide Certain Line Build Out )  
Functionality as Part of Regulated )  
Network Equipment on Customer Premises )

RM-8158

OPPOSITION OF THE INDEPENDENT DATA  
COMMUNICATIONS MANUFACTURERS ASSOCIATION

Herbert E. Marks  
James L. Casserly  
Kerry E. Murray  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 407  
Washington, D.C. 20044  
(202) 626-6600

Attorneys for IDCMA

February 8, 1993

No. of Copies rec'd  
List A B C D E

2411

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY OF POSITION.....	11
I. INTRODUCTION.....	2
II. VERILINK HAS FAILED TO DEMONSTRATE THAT A RULEMAKING PROCEEDING IS WARRANTED.....	4
III. VERILINK HAS MISCONSTRUED THE COMMISSION'S RULES AND POLICIES REGARDING CPE.....	9
IV. VERILINK HAS MISREPRESENTED THE APPROPRIATE RELATIONSHIP BETWEEN ANSI STANDARDS AND THE COMMISSION'S CPE POLICY.....	11
V. CONCLUSION.....	13

## SUMMARY OF POSITION

Verilink's petition for rulemaking is misguided and unpersuasive. Verilink has failed to provide the kind of detailed evidence the Commission has required before it will even consider whether it should initiate a rulemaking proceeding to examine whether to amend the Commission's pro-competitive CPE rules to migrate LBO functionality to the network. Rather than providing the specific, detailed information sought by the Commission, Verilink has filled its petition with unsubstantiated and improbable statements regarding the supposed "problems" that have arisen because the LBO functionality is competitively-provided.

Verilink's petition is also based upon a fundamental misunderstanding of the Commission's rules. Specifically, the rulemaking Verilink has requested would not accomplish its goals. A waiver of Section 64.702 -- which prohibits communications common carriers from providing CPE on a bundled or tariffed basis -- would be required to migrate CPE functionalities to the network. In addition, Verilink has misrepresented the status and significance of private standards activities in the policymaking process. Voluntary technical standards should be conformed to the Commission's rules and policies and not vice versa.

The Commission should therefore reject Verilink's petition for rulemaking.

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEB - 8 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Petition for Rulemaking to Amend )  
the Commission's Part 68 Rules )  
to Authorize Regulated Carriers )  
to Provide Certain Line Build Out )  
Functionality as Part of Regulated )  
Network Equipment on Customer Premises )

RM-8158

OPPOSITION OF THE INDEPENDENT DATA  
COMMUNICATIONS MANUFACTURERS ASSOCIATION

The Independent Data Communications Manufacturers Association ("IDCMA"), by its attorneys, hereby opposes the petition for rulemaking filed by Verilink Corporation ("Verilink") on December 14, 1992.<sup>1</sup> The goal of Verilink's petition is to persuade the Commission to initiate a rulemaking proceeding to authorize carriers to provide line build-out ("LBO") functionality, which is currently supplied by competitively-provided network channel terminating equipment ("NCTE"), through customer-premises devices provided as part of the monopoly network. Verilink asks that the Commission accomplish this goal by amending Section 68.308(h)(2)(ii) and (iii) of the Commission's rules. IDCMA opposes the petition. Verilink's proposal is misdirected

---

<sup>1/</sup> See Petition for Rulemaking of Verilink Corporation (filed Dec. 14, 1992) [hereinafter "Verilink Petition"]; FCC Public Notice, Mimeo 31270 (Jan. 8, 1993).

and misinformed. The Commission should therefore reject Verilink's petition and decline to initiate a rulemaking proceeding.

I. INTRODUCTION

IDCMA is an association of manufacturers of equipment used in data communications, including customer-premises equipment ("CPE") such as NCTE designed for connection with 1.544 Mbps digital (DS1) service. Over the years, IDCMA has been an active participant in the development of the Commission's CPE rules. These rules permit independent manufacturers like IDCMA's member companies to market and sell NCTE directly to end-users.

As required by Section 68.308(h)(2)(11), NCTE connected to DS1 service must be capable of delivering three levels of output pulses, which are selectable at the time of installation. The signal power of signals transmitted by the NCTE into the network must include selections that the Commission has identified as: Options A, B and C, with loss values at 772 KHz of 0 dB, 7.5 dB and 15 dB, respectively.<sup>2</sup> These settings are designed to limit signal power that NCTE transmits into the network, thereby minimizing the potential for harm to the network.

---

<sup>2/</sup> See 47 C.F.R. § 68.308(h)(2)(11)(1991).

In seeking the migration of the LBO functionality from competitive NCTE to the monopoly network, Verilink would have the Commission amend Section 68.308(h)(2)(ii) and (iii) to require that the output pulse templates of NCTE be "fixed" at only one setting, Option A, which is the setting with the highest signal level.

The Commission has determined that all CPE must be unbundled from transmission services and provided on a detariffed basis.<sup>3</sup> In addition, after review of an exhaustive body of evidence, it ruled that NCTE functionalities, with the exception of loopback testing, should be provided through competitively supplied CPE.<sup>4</sup> More recently, the Commission rejected attempts to migrate LBO functionality from CPE to a carrier-provided, customer-premises network device.<sup>5</sup> In so doing, the Commission made clear its determination that no further efforts to weaken the Commission's pro-competitive CPE policies in this context would be considered unless several specific

---

3/ 47 C.F.R. § 64.702(e)(1991).

4/ See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 3 FCC Rcd 1150, 1167 (¶ 140) (1988).

5/ See BellSouth's Petition for Declaratory Ruling or, Alternatively, Request for Limited Waiver of the CPE Rules to Provide Line Build Out (LBO) Functionality as a Component of Regulated Network Interface Connectors on Customer Premises, 6 FCC Rcd 3336, 3342 (¶ 26)(1991)(hereinafter "BellSouth Order").

questions were answered. Among other things, these questions call for the submission of detailed evidence.

Verilink's now asks the Commission to revisit its CPE policies. Verilink, however, has not even come close to providing the kind of detailed information the Commission has explicitly required as a prerequisite. Indeed, the Verilink petition is filled with unsupported conclusory statements rather than detailed evidence. Further, Verilink's petition is based upon a fundamental misunderstanding of the Commission's rules and policies and erroneous representations concerning the status and significance of private standards activities in the policymaking process. The Commission should therefore dismiss Verilink's petition and conserve its scarce administrative resources for more worthwhile endeavors.

II. VERILINK HAS FAILED TO DEMONSTRATE THAT A  
RULEMAKING PROCEEDING IS WARRANTED.

In 1988, BellSouth petitioned the Commission for a declaratory ruling that carriers may provide LBO not exclusively used in loopback testing through customer-premises devices provided as a bundled element of monopoly network services.<sup>6</sup> In the alternative, BellSouth asked for a waiver of the Commission's rules to provide LBO as part of

---

<sup>6/</sup> See Petition for Declaratory Ruling, or Alternatively, Request for Limited Waiver of BellSouth Corporation (filed Dec. 9, 1988).

the network. Verilink supported these requests, and at that time advocated that the CPE be limited to the use of a single LBO setting, precisely as is now proposed in Verilink's petition.<sup>7</sup> IDCMA opposed the requests, making clear its opposition to any changes in the CPE rules.<sup>8</sup>

The Commission rejected the petition for declaratory ruling, stating that the prior rulings clearly exempted only loopback testing -- but not LBO -- from the general classification of NCTE as CPE.<sup>9</sup> Further, the Commission denied the alternative request for a waiver, noting that "the impact of a new [American National Standards Institute] interface standard, which is the impetus for the subject petition, is a matter that may have broad impact on the telecommunications industry, including carriers, manufacturers and users."<sup>10</sup> The Commission ruled that such matters should be addressed, if at all, in a comprehensive rulemaking proceeding. And the Commission warned that any petition for rulemaking should provide specific substantive and quantitative evidence in response to several precise questions enumerated by the Commission.<sup>11</sup>

---

<sup>7</sup>/ See Comments of Verilink Corporation (filed Jan. 30, 1989).

<sup>8</sup>/ See Opposition of IDCMA (filed Jan. 30, 1989).

<sup>9</sup>/ BellSouth Order at 3342-43 (¶ 26).

<sup>10</sup>/ Id. at 3343 (¶ 28).

<sup>11</sup>/ Id. at 3343-44 (¶ 30).



Verilink has availed itself of the opportunity to seek to initiate a rulemaking but has not provided the information the Commission required as a prerequisite.

As in the earlier proceeding, Verilink now claims the ANSI DS1 interface standard, among other things, justifies migration of the LBO functionality. Learning from the BellSouth Order, Verilink has fashioned its petition in the form of responses to the Commission's inquiries. Verilink's particular responses, however, are uniformly unfounded and lacking in support, quantitative or otherwise. IDCMA will not comment on each and every flaw in the petition; highlighting a representative sample should suffice to establish the fundamentally misguided nature of the petition.

The central premise behind the petition is that the simple task of adjusting CPE to one of the three LBO settings is problematic and should be taken out of the hands of the customer. Specifically, Verilink claims:

[a]s a practical matter, adjusting the CPE output signal power at the time of installation is often left in the hands of the customer since carriers cannot determine the need for LBO when the customer's order is taken. All carriers have procedures for providing this information at installation, but getting it into the hands of the CPE installer, and having it properly interpreted is problematic.<sup>12</sup>

---

<sup>12</sup>/ Verilink Petition at 7.

Verilink repeatedly asserts that "burdensome joint engineering," "confusion," and "inefficiencies," have supposedly been caused by the "problem." Verilink has neglected to mention, however, that carriers have an obligation to specify the output signal power at the time of installation.<sup>13</sup> Any failure by the carriers to provide such information should not form the basis for migrating such functionalities from competitively supplied equipment to monopoly services. Moreover, Verilink's claims of "joint engineering with manufacturers" represent a gross overstatement.<sup>14</sup> In particular, this process need only involve the carrier and the user, and the only joint activity necessary is for the carrier to tell the customer which of the three settings should be used. This communication is hardly "time-consuming, costly, and inefficient."<sup>15</sup>

Given the simplicity of the task involved, Verilink's estimate of 8400 labor hours per year (\$210,000 in labor costs) and manufacturer travel expenses due to LBO setting problems is puzzling to say the least.<sup>16</sup> IDCMA's members have experienced no comparable problems with respect

---

<sup>13</sup>/ See 47 C.F.R. § 68.308(h)(2)(iii)(1991).

<sup>14</sup>/ Verilink Petition at 8.

<sup>15</sup>/ Id.

<sup>16</sup>/ See id. at 10.

to the provision of NCTE generally or LBO settings in particular. Indeed, Verilink's exaggerated claims of customer confusion are particularly weak now that some CPE manufacturers have for years offered NCTE that sets the LBO automatically.

Also unsubstantiated is Verilink's claim that there would be savings of \$3-7 per CSU if the LBO function were removed. IDCMA believes the savings would be significantly less. In any event, moving the functionality across the demarcation simply moves the costs to the network side; the costs are not eliminated. In any event, the primary concern should be the many benefits of competitively-provided CPE, including better performance and lower costs, which would be jeopardized by migration of LBO functionalities to the network. Verilink's claims that migration would facilitate rapid deployment of advanced transmission services are similarly unsubstantiated.<sup>17</sup> Verilink's only "evidence" for these claims are its own beliefs, which are contrary to those held by IDCMA's members and other CPE manufacturers.

---

<sup>17/</sup> See id. at 2. In addition, Verilink's vague reference to its experiences with 45 megabit and broadband ISDN services are plainly irrelevant to the subject of its petition: 1.544 Mbps services. See id. at 18-19.

III. VERILINK HAS MISCONSTRUED THE COMMISSION'S RULES  
AND POLICIES REGARDING CPE.

Verilink's petition betrays a fundamental misunderstanding of the Commission's rules and policies. Indeed, Verilink has proposed rules which would not even achieve its stated objective: that LBO functionality "be provided in the transmission path of 1.544 Mbps ('DS1') services as a component, of regulated network interface equipment located on customer premises."<sup>18</sup>

Verilink apparently believes it is possible to achieve LBO migration by deleting all references in Section 68.308 (h)(2)(ii) and (iii) to Options B and C and requiring that CPE contain only a 0 dB setting. The requirement of one fixed setting, however, would not affect the prohibition against carrier provision of LBO functionality. To migrate CPE functionalities to the network, a waiver of Section 64.702(e) -- which prohibits communications common carriers from providing CPE on a bundled or tariffed basis -- is required. Verilink has neither requested nor attempted to justify such a waiver.<sup>19</sup>

---

<sup>18/</sup> Id. at 1.

<sup>19/</sup> In any event, it is doubtful that Verilink has standing to seek the waiver. The waiver standard set forth by the Commission is explicitly available to carriers alone. See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 2 FCC Rcd 3072, 3105 (1987).

Verilink also fundamentally misconceives another Commission rule. Verilink incorrectly claims that the Commission's rules require that "the average cable length from the CPE to the interface be no more than 12 inches."<sup>20</sup> The Commission's rules, however, address only the appropriate length of the wire from the point where the wire enters the customer's premises to the network interface.<sup>21</sup> It is this distance that the Commission requires be no more than twelve inches. The distance from the network interface to the CPE is almost certain to be considerably greater. And, eliminating the LBO from the CPE would mean that many DS1 installations could not comply with the twelve-inch requirement. Thus, to accommodate a single LBO setting without significant performance degradation, customers would be required to either move their equipment to a less convenient location closer to the network interface or install otherwise unnecessary signal repeaters.

Verilink's misapplication of the Commission's rules and policies is reason enough to dismiss its petition. Taken to its logical end, Verilink's petition would achieve the illogical result of having the Commission remove LBO functionality as a CPE requirement, without leaving any party with authority to provide such functionality.

---

<sup>20</sup>/ Verilink Petition at 16-17.

<sup>21</sup>/ See 47 C.F.R. § 68.3(b)(2)(1991).

IV. VERILINK HAS MISREPRESENTED THE APPROPRIATE  
RELATIONSHIP BETWEEN ANSI STANDARDS AND THE  
COMMISSION'S CPE POLICY.

Throughout its petition, Verilink repeats the assertion that the Commission should mold its rules around ANSI Committee T1 standards developments.<sup>22</sup> This claim distorts both the role of the Commission and the current state of communications standards development. Verilink fails to recognize the basic principle that the Commission, not Committee T1, is the body that is charged with setting regulatory policy. A decision whether certain CPE functionalities -- now part of the competitive sector -- should instead be provided solely by monopoly carriers is properly within the domain of the Commission. Technical standards for the communications industry developed by voluntary private industry forums should conform to the rules and policies established by the Commission as statutory arbiter of the public interest, not vice versa.

Verilink is also mistaken in its claim that its proposed amendment of Section 68.702 "will bring the Commission's rules in line with the current direction of technical standards for digital services and equipment."<sup>23</sup>

---

<sup>22/</sup> See, e.g., Verilink Petition at 2-3, 12-13 and 20. Committee T1, a standards developing committee of the Exchange Carriers Standards Association, has been accredited by ANSI to submit standards for approval and adoption by ANSI.

<sup>23/</sup> Id. at 1.

technical standards for digital services and equipment."<sup>24</sup> Verilink has neglected to mention, however, that Committee T1 is in the process of revising the DS1 standard to conform it with the Commission's CPE rules. Indeed, a working group of Committee T1 has already agreed about how to change the standard to conform with the Commission's rules and policies. Given the Commission's statutory role as the policymaker, and the current Committee T1 work to conform the DS1 standard to the Commission's CPE rules and policies, it would be untenable and counterproductive for the Commission to initiate the rulemaking proceeding sought by Verilink at this juncture.

---


<sup>24</sup>/ Id. at i.

V. CONCLUSION

For the reasons set forth above, IDCMA urges the Commission to reject Verilink's petition for rulemaking.

Respectfully submitted,

By:

  
Herbert E. Marks  
James L. Casserly  
Kerry E. Murray  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 407  
Washington, D.C. 20004-0407  
(202) 626-6600

Attorneys for IDCMA

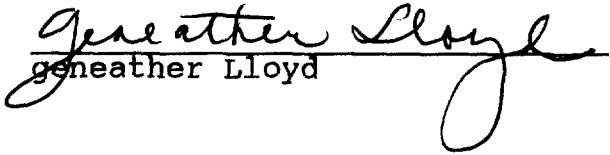
February 8, 1993



CERTIFICATE OF SERVICE

I, Geneather Lloyd, hereby certify that a copy of the foregoing Opposition of the Independent Data Communications Manufacturers Association, was served by hand or by First-Class United States mail, postage prepaid, upon the following party this 8th day of February, 1993:

William Buckley  
Vice President, Technology  
Development  
Verilink Corporation  
145 Baytech Drive  
San Jose, California 95134

  
Geneather Lloyd